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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,636	11/28/2001	Tsuyoshi Sakyo	216251US3PCT	5729

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EXAMINER

MORROW, JASON S

ART UNIT PAPER NUMBER

3612

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,636

Applicant(s)

SAKYO, TSUYOSHI

Examiner

Jason S. Morrow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,5-8 and 11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 28 November 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 7-34486 (hereafter Yoshimi et al.) in view of Stevens and Martin, Jr.

Yoshimi et al. discloses a cab for a construction machine having two side frames (the side walls), a door, a front window, a roof, and a rear section, and a cross beam member (12), but fails to teach the use of a reinforcing beam member provided between first and second side frame structures.

Stevens discloses a light bar apparatus of the type typically installed on vehicles comprising a rod-like beam member (16). Stevens also discloses four lamps mounted to the beam member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a cab, such as that disclosed by Yoshimi et al., to include a light bar, as taught by Stevens, along the upper front portion of the cab to enhance operator visibility at night without blocking visibility through the window, and furthermore, the beam member of Stevens would also reinforce the upper front section in the transverse direction.

Yoshimi et al. and Stevens fail to disclose a window panel in the roof.

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Martin, Jr. discloses a cab for an industrial vehicle having a window in the front roof panel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify a cab, such as that above, to include a roof panel window in the front, as taught by Martin, Jr., to enhance the range of visibility of the operator in the cabin. Additionally, when including the roof panel window, it would have been further obvious to one of ordinary skill in the art to mount the light bar of Stevens in the boundary region between the front and roof panel windows, and thus in parallel relation with the cross beam member, to prevent the light bar from obscuring the operator's field of view.

Yoshimi et al., Stevens, and Martin, Jr. Do not disclose the reinforcing member being a rod like metal pipe and of an annular shape in cross-section.

The use of metal pipe having an annular shape in cross-section for light bars is old and well known in the art.

It would have been an obvious to one of ordinary skill in the art at the time the invention was made to modify a reinforcing member, such as that disclosed above, to be a rod like metal pipe and of an annular shape in cross-section, as is old and well known in the art, for aesthetic design purposes.

None of the references teach mounting brackets to secure the light bar of Stevens to the cab.

The use of brackets to mount light bars is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make or use pre-made brackets (as needed) to mount the light bar to the cab since it

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is necessary to mount the bar to a vehicle in some manner. Also, since the light bar pivots, it would be necessary to use mounting brackets on the end support units and, accordingly, the front sides or front lateral sides of the cab.

None of the references teach the use of foaming resins.

The use of foaming resins for filling and reinforcing structural members is old and well known in the arts.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a standard light bar of the type disclosed above (without adjustable lights) if the adjustability was not desired, and to further fill the hollow bar with reinforcing resin to further strengthen the beam.

Response to Arguments

3. Applicant's arguments filed 7/16/03 have been fully considered but they are not persuasive.

Applicant first argues that none of the cited references teach a reinforcing beam member as recited in claim 1. Applicant asserts that the light bar housing of the Stevens reference would not reinforce the upper front section in the transverse direction. Applicant merely states this conclusion without providing any real evidence. While the light bar of Stevens may not function in a manner equal to the invention of Applicant, the claims are broad enough to encompass the structure of Stevens. Applicant's assertion that the proposed combination presented above does not function as well as the invention of Applicant does not have any bearing on whether the cited references meet the limitations of the claims. Applicant must claim structural details not

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suggested by the prior art that make it superior to the construction disclosed by the prior art in order to distinguish the invention from the prior art. Simply having a round cross-section for a light bar is very well known. While the reasoning for using a round cross-section may be different between the applicant's invention and the rejection stated above, both reasons result in a construction encompassed by the claims.

Applicant also argues that the rejection uses hindsight reasoning, but fails to discuss why other than simply stating so. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason S. Morrow whose telephone number is (703) 305-7803. The examiner can normally be reached on Monday-Friday, 8:00a.m.-4:30p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Jason S. Morrow
Examiner
Art Unit 3612

October 21, 2003


JASON MORROW
PATENT EXAMINER
10/23/03